

United States 5
Circuit Court of Appeals

For the Ninth Circuit.

LAKE UNION DRY DOCK & MACHINE
WORKS, a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division.

FILED

SEP 14 1934

PAUL P. O'BRIEN,
CLERK

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. WRIGHT, JONES & BRONSON,
610 Colman Building, Seattle, Washington.
Attorneys for Appellant.

Messrs. J. CHARLES DENNIS and
JOHN AMBLER,
222 Post Office Building, Seattle, Washington.
Attorneys for Appellee. [1*]

United States District Court Western District of
Washington, Northern Division.

No. 20729

UNITED STATES OF AMERICA,
Plaintiff,
vs.

LAKE UNION DRY DOCK & MACHINE
WORKS, a corporation,
Defendant.

COMPLAINT.

Comes now the UNITED STATES OF AMERICA, plaintiff herein, by Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, and complaining of the defendant herein, alleges:

*Page numbering appearing at the foot of page of original certified Transcript of Record.

I.

That during all the times hereinafter mentioned, the plaintiff herein was and is now a corporation sovereign.

II.

That the defendant LAKE UNION DRY DOCK & MACHINE WORKS is a corporation existing under the laws of the State of Washington with its principal place of business in the City of Seattle, State of Washington, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court.

That the defendant at all times hereinafter mentioned conducted a dry dock and machine works located in the City of Seattle, Division and District aforesaid, for the repair and rebuilding of vessels.

III.

That on or about the 30th day of December, 1931, the Coast Guard Cutter "GUARD" was in the dry dock of the defendant corporation undergoing repairs; that said defendant corporation had contracted with the Treasury Department, United States Coast Guard, a branch of the Government of the United States to repair the United States Coast Guard vessel "GUARD"; that said contract was executed on the [2] 18th day of November, 1931, and provided for the repair of the "GUARD" by the defendant corporation at the plant of the defendant corporation, said contract further containing a provision as follows:

GENERAL CONDITIONS—FIRE PROTECTION. It is clearly understood that the

contractor agrees to furnish the vessel ample fire protection during the time in dry-dock or on the marine railway.

IV.

That the United States Coast Guard cutter "GUARD" was on or about the 30th day of December, 1931, in the dry dock of the defendant corporation for repairs pursuant to said contract heretofore referred to, and that on said date a fire originated upon the premises of the defendant corporation, and because of the negligence of the defendant corporation, its officers and employees, said fire spread to the United States Coast Guard Cutter "GUARD" while in the defendant's dry dock aforesaid; that as a result of said fire the United States Coast Guard Cutter "GUARD" was burned and damaged to such an extent that it was necessary to have said vessel repaired; that the defendant corporation herein repaired said vessel for damages sustained as a result of said fire under contract No. Teg. 15520, for which work the defendant corporation was paid the sum of Three thousand three hundred sixty-two Dollars (\$3,362.00): that the sum of \$3,362.00 which was paid for the repair of the United States Coast Guard Cutter "GUARD" is the amount of damage the plaintiff suffered as a result of the negligence of the defendant corporation as aforesaid.

V.

That the defendant corporation carelessly and negligently failed in violation of their contract made and executed on the 18th day of November, 1931, and in special violation of the provision heretofore stated with reference to fire protection, failed to provide ample fire protection for said vessel, to-wit: said defendant corporation failed to provide a hose suitable for fire fighting, [3] failed to provide fire fighting equipment, and failed to provide men necessary for the fighting of said fire.

VI.

That due demand has been made by the plaintiff herein from the defendant corporation for payment of the sum of Three thousand three hundred sixty-two Dollars (\$3,362.00) and the defendant corporation has failed, neglected and refused to pay the same, or any part thereof.

WHEREFORE, the plaintiff prays for judgment against the defendant corporation LAKE UNION DRY DOCK & MACHINE WORKS, in the sum of Three thousand three hundred sixty-two Dollars (\$3,362.00), together with interest thereon at the legal rate from December 30th, 1931, until paid and for its costs and disbursements to be taxed herein.

ANTHONY SAVAGE

United States Attorney.

JEFFREY HEIMAN

Assistant United States
Attorney.

United States of America,
Western District of Washington,
Northern Division—ss.

JEFFREY HEIMAN, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and as such makes this verification for and on behalf of the United States of America.

That he has read the foregoing Complaint, knows the contents thereof, and believes the same to be true.

JEFFREY HEIMAN

Subscribed and sworn to before me this 15th day of November, 1932.

[Seal]

S. COOK

Deputy Clerk, United States District
Court, Western District of Washington.

[Endorsed]: Filed Nov. 15, 1932. [4]

[Title of Court and Cause.]

ANSWER

Comes now the Lake Union Dry Dock & Machine Works, a corporation, defendant above named, and for answer to plaintiff's complaint herein, admits, denies and alleges as follows:

I.

Referring to paragraph IV, defendant admits that the fire therein referred to spread to the cutter

Guard, but denies that this was occasioned by or resulted from the negligence of the defendant in any way whatsoever; admits that the Guard was burned and damaged so that it was necessary to have the same repaired, but denies that the work therein referred to and the expense thereof alleged to amount to the sum of \$3,362.00, was loss or damage caused or resulting from the negligence of the defendant.

II.

Referring to paragraph V of said complaint, denies each and every allegation therein contained.

And for an Affirmative Defense to said action, defendant alleges as follows:

I.

That pursuant to the regulations of the Coast Guard Department, it is the order and the practice of the Department [5] to keep on board any vessel at all times a sufficient number of men for the performance of watch, patrol and other duties, and the protection and care of the vessel, and that at the time of said fire the Cutter Guard had on board two or more members of her crew; that said members of the crew were awakened at the time said fire originated, which was at a point considerably removed from the location of said vessel; that at such time and for a period of fifteen or twenty minutes subsequent thereto, the said vessel was not in proximity to the fire, and was not subject to damage therefrom; that said vessel was then resting upon a small floating dry dock moored to

the southerly side of the wharf, upon which said fire originated, that there was a slight breeze from the north, and that had the crew of the Guard simply cast off the lines by which the dry dock was moored to the wharf, the said dock, together with the Guard resting thereon, could have been easily pushed or would have drifted across the waterway to the south, and would have sustained no damage whatsoever by reason of said fire; that the crew of the Guard made no effort to save or protect said vessel, and had they made a reasonable effort so to do, as required by their duty and regulations, and by common prudence under the circumstances, said vessel would have been protected and saved from any injury whatsoever; that such damage as occurred was directly attributable to and resulted from the negligence of the crew of the Guard in failing to take proper precautions for the safety of said vessel, and that defendant is not responsible therefor.

WHEREFORE, defendant prays that said action may be dismissed, and that it have and recover its costs and [6] disbursements herein.

BRONSON, JONES & BRONSON

Proctors for defendant.

United States of America,
Western District of Washington,
Northern Division.—ss.

H. B. JONES, being first duly sworn, on oath deposes and says: That he is Secretary of Lake

Union Dry Dock & Machine Works, a corporation, defendant above named, and that he makes this verification for and on behalf of said corporation, being thereunto duly authorized; that he has read the above and foregoing ANSWER, knows the contents thereof, and believes the same to be true.

H. B. JONES

Subscribed and sworn to before me this 5th day of January, 1933.

[Seal] SHERMAN F. EBBINGHOUSE
Notary Public in and for the State of Washington,
residing at Seattle.

Received a copy of the within Answer this 5th day of Jan. 1933.

ANTHONY SAVAGE

Attorney for Pltff.

[Endorsed]: Filed Jan. 6, 1933. [7]

[Title of Court and Cause.]

REPLY.

Comes now the UNITED STATES OF AMERICA, plaintiff herein, by its attorneys Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, and for reply to the answer and affirmative defense of the defendant, alleges as follows:

I.

Plaintiff denies each and every material allegation contained in defendant's affirmative defense.

WHEREFORE, having fully replied, plaintiff prays for the relief asked for in its complaint on file herein.

ANTHONY SAVAGE

United States Attorney.

JEFFREY HEIMAN

Assistant United States Attorney. [8]

United States of America,
Western District of Washington,
Northern Division.—ss.

JEFFREY HEIMAN, being first duly sworn, on oath deposes and says: That he is an Assistant United States Attorney for the Western District of Washington, and as such makes this verification for and on behalf of the UNITED STATES OF AMERICA, plaintiff herein; that he has read the foregoing Reply, knows the contents thereof, and believes the same to be true.

JEFFREY HEIMAN

Subscribed and sworn to before me this 11th day of January, 1933.

[Seal]

T. W. EGGER

Deputy Clerk, United States District Court,
Western District of Washington.

Received a copy of the within Reply this 13 day of Jan. 1933.

BRONSON, JONES & BRONSON

Attorney for deft.

[Endorsed]: Filed Jan. 13, 1933. [9]

[Title of Court and Cause.]

STIPULATION WAIVING TRIAL BY JURY.

IT IS HEREBY STIPULATED AND AGREED, by and between the respective parties hereto, by and through their undersigned attorneys, that the above matter may be transferred from the assignment and trial calendar of the Honorable Edward E. Cushman, one of the judges of the above entitled Court, to the assignment and trial calendar of the Honorable Jeremiah Neterer, one of the judges of the above entitled Court, and that said matter may be set down for hearing and trial before the Honorable Jeremiah Neterer on the 24th day of October, 1933.

IT IS FURTHER STIPULATED AND AGREED, that the above matter may be tried by the above entitled court before the Honorable Jeremiah Neterer without the intervention of a jury, such trial by jury being hereby expressly waived; and

IT IS FURTHER STIPULATED AND AGREED, that said Court may make and enter its findings of fact and conclusions of law therein.

DONE at Seattle, Washington, this 29th day of September, 1933.

ANTHONY SAVAGE

United States Attorney,

Attorney for Plaintiff.

WRIGHT, JONES & BRONSON

Attorneys for Defendant.

[Endorsed]: Filed Oct. 2, 1933. [10]

[Title of Court and Cause.]

STIPULATION.

IT IS HEREBY STIPULATED by and between the parties hereto through their respective attorneys of record, undersigned, that the attached provisions, which appear in the 1923 edition of "Regulations for the United States Coast Guard, Treasury Department," may be made, and become, a part of the record of the above entitled cause, and may be considered as having been offered and received in evidence at the conclusion of the testimony of the case and prior to submission of the same for decision.

TOM DeWOLFE

Attorneys for Plaintiff.

WRIGHT, JONES & BRONSON

Attorneys for Defendant. [11]

The following provisions appear in the 1923 Edition of Regulations for the United States Coast Guard:

Sec. 533:

"Liberty shall be granted the crew at such times and under such conditions as the commanding officer may direct. An ample allowance is recommended in the interests of recreation and health, but when liberty is granted there shall be maintained at all times a force sufficient for ordinary emergencies."

Sec. 1389: (Sub. 4)

The following appears under the heading "The Enlisted Force":

“They shall see that the regulations concerning lights in the storerooms to which they have access are strictly observed, and that every precaution is taken to prevent fire or other accident.”

Sec. 1503: (Sub. K)

“Every proper precaution shall be taken to guard against fire, and each crew shall be proficient at fire drill. The steam pumps shall be tried at fire quarters when under steam. The chemical fire extinguishers shall be tested once a year, and recharged when necessary.”

(Sub. L)

“Fire buckets shall be kept filled with clean, clear water ready for use, shall be refilled at frequent intervals, and shall not be removed from their proper places or used for any other purpose than extinguishing fire.”

Sec. 1563:

“The following requirements shall be complied with regarding the reports to be made to the commanding officer at 8 p. m. daily:

(a) 1. * * *

(Sec. 2) “He shall see that the fire hose are coupled and led along the decks, that the fire buckets are full of water, and that all other necessary precautions against fire have been taken.”

Sec. 2054: (Sub. J)

“In each fireroom fitted for oil burning that shall be provided fire-extinguishing apparatus

consisting of steam fire hose permanently coupled and of sufficient length to reach all parts of the fireroom, a box containing about 2 bushels of dry sand with a large scoop, and portable fire extinguishers of approved types. The portable extinguishers shall be kept in the fireroom, engine room, compartments through which fuel-oil pipes pass, and in compartments adjacent to fuel-oil tanks, and shall be frequently inspected. The liquid in the foam extinguishers shall be tested at least once each month. The fireroom force shall be instructed as to the valves to close, or other procedure, in case of fire or explosion in connection with the oil apparatus."

[Endorsed]: Filed Nov. 17, 1933. [12]

[Title of Court and Cause.]

COURT'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

ANTHONY SAVAGE, U. S. Attorney,
TOM DeWOLFE, Asst. U. S. Atty.,

For Plaintiff;

WRIGHT, JONES & BRONSON,

For Defendant.

This cause having heretofore, pursuant to due assignment, been regularly tried by the submission of evidence on the part of the plaintiff and on the part of the defendants, and the court, after hearing argument by proctors and considering the same,

makes the following findings of fact and conclusions of law.

That during all the times hereinafter mentioned the plaintiff was and is now a corporation sovereign; (2) that the defendant is and at all times hereinafter mentioned, was a corporation existing by virtue of the laws of the state of Washington, that its principal place of business is in the city of Seattle in the northern division of the Western District of Washington and within the jurisdiction of this court; that the said defendant at all times hereinafter mentioned conducted a dry dock and machine works and ship repair business at its plant located in the city of Seattle for the repair and rebuilding of vessels, including the drydocking thereof;

(3) That on or about the 30th day of December, 1931, the United States Coast Guard cutter "Guard", pursuant to written [13] contract, entered into on the 18th day of November, whereby the defendant agreed to make certain repairs on the said "Guard", which contract is in evidence herein as Plaintiff's Exhibit No. 1, and contains the following provisions:

"GENERAL CONDITIONS—
FIRE PROTECTION

IT IS CLEARLY UNDERSTOOD THAT
THE CONTRACTOR AGREES TO FURNISH
THE VESSEL WITH AMPLE FIRE
PROTECTION DURING THE TIME IN
DRY DOCK OR ON THE MARINE WAY."

That the dry dock of the defendant is placed upon a floating dry dock 32 feet wide and 70 feet long,

moored on the southerly side to a wharf, the face of which extended generally in an east and west direction; that to the south side of the dry dock was an open waterway, bounded upon the southerly side by a row of poles extending in an east and west direction parallel to the wharf, against which said dry dock lay, and about 100 feet south thereof; that to the north side of said dry dock and located upon the wharf against which the dry dock lay and extending in an east and west direction at a distance of about 30 feet from the southerly side of said wharf was an open woodwork shed, designated as a joiner shop extended parallel to said dry dock to a distance of approximately 30 feet beyond the easterly end thereof; that located about 12 or 15 feet east of the easterly end of said joiner shop was a boiler room about 12 by 15 feet in dimensions, which room was in a northeasterly direction from the floating dock, a distance of about 50 feet; that the plant of the defendant was equipped with modern and sufficient fire fighting equipment for its own protection, consisting primarily of a number of chemical fire extinguishers, located at various positions throughout the plant, and three 2½ gallon chemical extinguishers separated by 20 feet intervals were hung upon the southerly side of the posts supporting the south side of the joiner shop and directly opposite said dry [14] dock and about thirty feet therefrom, and a 50-gallon chemical cart extinguisher was located upon the northerly side of said joiner shop; that said extinguishers were accessible and available for

use, but the crew of the plaintiff had not been advised thereof by the defendant nor by any other person advised or instructed in the use of such extinguishers or given authority or permission to use the same; that a canvas-covered fire hose and connection was located upon the north side of the joiner shed; that there was no fire hydrant or watermain for fire protection on the wharf adjacent to the dry dock or the "Guard", or between said vessel and the joiner shop; that there was extended from the said watermain to the dock to the wharf adjacent to the dry dock a one-inch waterpipe connection, to which there was a one-inch hose attached, which was used for the purpose for which it was designed, for washing the sides of the ships in dry dock and was used for the protection of the interior of the "Guard" while on dry dock while she was dismantled. The engines of the "Guard" while on dry dock were dismantled and her fire equipment for her own protection was rendered useless; that the length of said hose was approximately 100 feet long and capable of throwing a stream of water 60 or 75 feet; that a crew of two seamen lived on board the "Guard"; that on the morning of December 31, 1931, at about 4:30 or 5:00 A. M., a fire originated at defendant's plant, in the boiler room; that the fire was discovered by a person living on a barge moored at defendant's plant, but not in the defendant's employ. This party immediately notified the defendant's watchman, who was then in the dockmaster's office, from which point the fire was not visible, and, likewise, immediately awakened the two seamen on the "Guard". The nightwatchman immediately telephoned an alarm to

the fire department. The members of the crew went from their vessel to the wharf, took the one-inch hose, the nozzle end of which they had, [15] for protection, placed on the bow of the "Guard", turned on the water and attempted to quench the fire by turning the full force of this hose upon the fire in the boiler room. *They* they were unable to do, and the fire spread to the joiner shop in which was stored inflammable material, and about forty feet from the end of the shop was stored a dinghy belonging to the "Guard". When they were unable to stop the fire, the seamen ran and took the dinghy from the shop and carried it some distance to safety, approximately 100 feet or 125 feet, and then returned and cut the rope that anchored the dry dock to the wharf and endeavored to push the dry dock and the "Guard" upon it away from the wharf. There was a slight wind blowing the fire towards the "Guard".

The fire department did not respond immediately, and the nightwatchman again called and went to the entrance gate into the defendant's plant, and opened the gate for the fire department to enter. Usually the first equipment of the fire department would respond to this location in from three to five minutes, but on this occasion the equipment did not arrive for fifteen or twenty minutes. Neither the night watchman nor any one else used the chemical fire extinguishers or requested the seamen to do so, and the seamen knew nothing about it.

The seamen acted with all diligence and as reasonably prudent persons would under the circumstances, in the protection of their vessel. The plant of the

defendant was supplied with all necessary fire apparatus for its protection, but there was no fire protection afforded for the protection of the vessel on the dry dock, either by water supply or chemical apparatus. As a result of the fire the "Guard" was burned and damaged, and the defendant company repaired the "Guard" for the damages sustained as a result of said fire, under contract No. TCG 15520, in the sum of \$3,362.00, which was paid for the repair of the United States Coast Guard cutter "Guard". [16]

The court finds that the relation between the plaintiff and the defendant was that of bailor and bailee, under bailment to the mutual benefit of both parties, in which the bailee agreed to furnish the vessel ample fire protection during the time in dry dock or on the marine way, and said bailee failed to exercise, under the circumstances, ordinary care required under the law and the said contract.

The court finds that the plaintiff has demanded of the defendant the payment of \$3,362.00, and the defendant has failed and refused to pay the same.

JEREMIAH NETERER

United States District Judge.

And as a conclusion the court finds that the plaintiff is entitled to recover judgment against the defendant in the sum of \$3,362.00, together with the interest thereon from the date of demand, and the costs and disbursements to be taxed herein.

Done this 26th day of December, 1933.

JEREMIAH NETERER

United States District Judge.

[Endorsed]: Filed Dec. 26, 1933. [17]

United States District Court, Western District of
Washington, Northern Division.

No. 20729

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAKE UNION DRY DOCK & MACHINE
WORKS, a corporation,

Defendant.

JUDGMENT.

This matter having come on for trial before the undersigned Judge of the above entitled Court, a jury having been waived, plaintiff being represented by Anthony Savage, United States Attorney for the Western District of Washington, and Tom DeWolfe, Assistant United States Attorney for said District, and defendant being represented by its attorneys, Wright, Jones & Bronson, and the Court having taken the matter under advisement, and the parties having submitted the same on written briefs and the Court having heretofore filed herein its signed Findings of Fact and Conclusions of Law in favor of the plaintiff, and the Court being duly advised in the premises, now, therefore

It is hereby ORDERED and ADJUDGED that the plaintiff do have and recover judgment of and from defendant in the sum of Thirty-three Hundred Sixty-two (\$3,362.00) Dollars, together with interest thereon at the legal rate from March 12, 1932, and together with its costs and disbursements to be taxed herein according to law.

Done in open court this 12th day of June, 1934.

JEREMIAH NETERER

United States District Judge.

[Endorsed]: Filed Jun. 12, 1934. [18]

[Title of Court and Cause.]

EXCEPTIONS TO JUDGMENT.

The defendant, Lake Union Dry Dock & Machine Works, a corporation, by its undersigned attorneys, hereby excepts to the judgment this day made and entered herein, allowing to the plaintiff recovery of and from the defendant in the sum of \$3,362.00 with interest from March 17, 1932, and costs, and to each and every part thereof.

Dated this 12th day of June, 1934.

WRIGHT, JONES & BRONSON

Attorneys for Defendant.

The foregoing exceptions are hereby noted and allowed.

JEREMIAH NETERER

District Judge.

Copy received Jun. 12, 1934.

J. CHARLES DENNIS

U. S. Attorney

JOHN AMBLER

Asst. U. S. Atty.

[Endorsed]: Filed Jun. 12, 1934. [19]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now the defendant above named, by its attorneys, and respectfully shows that on the 12th day of June, 1934, the above entitled Court entered a final judgment herein, based upon its special findings heretofore made and entered herein, and allowed to the plaintiff a recovery against this defendant of the sum of \$3,362, together with interest thereon at the legal rate from March 17, 1932, and costs taxed at the sum of \$35.05.

This defendant, your petitioner, feeling itself aggrieved by said judgment, has heretofore served and does herewith file this, its notice and petition for allowance of appeal, from said decision and judgment, and the rulings of the Court thereto entered in the trial of said cause, and in the course of said proceedings, to the United States Circuit Court of Appeals, for the 9th Circuit, under the laws of the United States in such cases made and provided, and herewith petitions the court for an order allowing this appeal.

WHEREFORE, your petitioner prays that said appeal to said Court be allowed, and that an order be made, fixing the amount of cost and supersedeas bond, conditioned as provided by law, and that upon the giving of such bond as may be fixed herein, all other and further proceedings may be suspended until the [20] determination of said appeal by the said Circuit Court of Appeal.

WRIGHT, JONES & BRONSON

Attorneys for defendant and appellant.

Copy of the foregoing notice and petition for allowance of appeal received this 12th day of July, 1934.

J. CHARLES DENNIS

JOHN AMBLER

Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 12, 1934. [21]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the defendant above named, and in connection with its appeal in the above cause which has been allowed, assigns the following errors, upon which it relies to reverse the judgment herein, as appears of record:

I.

The making and entry of that portion of finding number 3, which recites that the crew of the plaintiff had not, by the defendant, nor by any other person, been advised or instructed in the use of such fire extinguishers, or given authority or permission to use the same, upon the ground that the same are unsupported by and contrary to the evidence in the case.

II.

The making and entry of that portion of finding number 3, reciting:

“That there was no fire hydrant or water-main for fire protection on the wharf adjacent

to the dry dock or the Guard, or between said vessel and the joiner shop;”

upon the ground that the same is unsupported by and contrary to the evidence in the case.

III.

The making and entry of that portion of finding number 3, reciting that the fire equipment carried by the Guard for its own protection was rendered useless during the time it was in dry dock, except as to the water pumps of said vessel; upon the [22] ground that the same is unsupported by and contrary to the evidence in the case.

IV.

The making and entry of that portion of finding number 3, reciting:

“The seamen acted with all diligence and as reasonably prudent persons would under the circumstances;”

upon the ground that the same is unsupported by and contrary to the evidence in the case.

V.

The making and entry of that portion of finding number 3, reciting:

“That there was no fire protection afforded for the protection of the vessel on the dry dock, either by water supply or chemical apparatus;”

upon the ground that the same is unsupported by and contrary to the evidence in the case.

VI.

The making and entry of that portion of finding number 3, reciting that:

“The court finds that the relation between the plaintiff and the defendant was that of bailor and bailee, under bailment to the mutual benefit of both parties, in which the bailee agreed to furnish the vessel ample fire protection during the time in dry dock or on the marine way, and said bailee failed to exercise, under the circumstances, ordinary care required under the law and the said contract;”

upon the ground that the same is contrary to and unsupported by the evidence in the case, and law applicable thereto.

VII.

The failure and refusal of the Court to make and enter the following portions of defendant's proposed findings of fact, filed herein upon December 26, 1933, or the substance thereof, as requested in said proposed findings, and in defendant's exceptions and request for additional findings filed herein upon the 30th day of December, 1933, in the following respects: [23]

(a) “That said vessel was required to carry, and did carry, pursuant to Coast Guard Regulations in evidence herein as defendant's Exhibit A-6, fire equipment for her own protection, consisting of extinguishers, sand in boxes, water in buckets, * * *”

(b) “That the crew of two men left on board were considered by *by* the plaintiff and its commanding officer to be adequate and sufficient to care for the safety of said vessel in any emergency that might ordinarily arise, and also were considered sufficient to move the dry dock, if necessary, and to extinguish any fire, or take care of anything out of the ordinary which would occur on board said vessel.”

(c) “That the commanding officer of said vessel considered that the hose furnished by the defendant, and the water supply, to be made available, was sufficient to take care of a fire on board said vessel.”

(d) “That at the time the members of the crew went from the vessel to the wharf, the fire was confined to the inside of the boiler room, and the flames were just beginning to break through the roof, and that the members of the crew endeavored for a period of five to seven minutes to put out the fire in the boiler room.”

(e) “That the dock was pushed and drifted out in a south-westerly direction into the open channel, out of range of the fire, and the crew thereupon extinguished any flames remaining by the use of buckets and water dipped from alongside the dock.”

(f) “That at no time did the crew use the hose furnished by the defendant upon said vessel; that had said hose been kept on board said vessel, and used for the protection of said vessel, it would have prevented or substantially

lessened the damage that said vessel suffered from the fire.”

(g) “That defendant’s watchman endeavored to reach the fire hose upon the northerly side of the shed upon the wharf adjoining the vessel, but that by reason of the draft and the heat carried under the roof, he was unable to do so, and was likewise unable to make use of the chemical cart above referred to.”

(h) “That the dry dock on which the vessel rested, was capable of being readily moved by two men, particularly in the case of an assisting breeze; that at the time of such fire there was a light breeze from the north or northeast, blowing from the fire towards the dry dock; that the crew of said vessel did not undertake to move said dock for at least fifteen minutes after they were awakened, and went on board the wharf and began fighting the fire; that had they undertaken to move it at once, or even at the time they ceased using the hose and went to carry out the dinghy, they could have moved it out of reach of the fire in time to have prevented the damage that occurred to the boat, or a very substantial part thereof; [24] that there was nothing to prevent the crew from moving said vessel immediately they were awakened, and went on deck;”

on the ground that the said proposed findings, and each of them, were established by the uncontradicted evidence, and material to the issues in the case.

VIII.

Failure and refusal of the Court to make findings upon the following propositions as proposed and requested in defendant's request for additional findings, filed herein upon the 30th day of December, 1933, or the substance thereof, as follows, to-wit:

(a) That the purpose of the fire protection clause in the contract between the plaintiff and defendant, was to furnish to the vessel similar fire protection to that provided by her own equipment when not out of commission, and that such protection was furnished by the hose and water supply provided for said vessel.

(b) As to whether or not the commanding officer of the Guard considered and accepted the hose furnished to the vessel as being adequate and sufficient for its protection.

(c) Whether or not, if the hose kept on board the vessel had been used on the vessel, it would have prevented or substantially lessened the damage which occurred.

(d) What period of time elapsed from the time that the crew of the Guard was awakened and available for duty, to the time that they commenced moving the dry dock upon which the Guard rested, away from the dock.

(e) Whether or not the damage to the Guard could have been prevented, had the crew of the Guard cut it loose and pushed it away from the dock;

1. Immediately upon responding to the alarm and endeavoring to put out the fire;

2. At the time of ceasing efforts to put out the fire, and before moving the dinghy.

(f) That at the time of the occurrence of the fire, the vessel was in the possession and under the control of the plaintiff, and not in the exclusive possession and control of the defendant;

on the ground that said propositions were, and each of them is, a material issue involved in the case, established by competent and uncontradicted evidence therein. [25]

IX.

The making and entry of conclusion of law to the effect that the plaintiff is entitled to recover judgment against the defendant in the sum of \$3,362.00, together with interest and costs, or in any sum whatsoever.

X.

The making and entry of judgment herein, awarding judgment in favor of the plaintiff and against the defendant, for the sum of \$3,362.00, with interest and costs.

WRIGHT, JONES & BRONSON

Attorneys for Defendant.

Copy received this 12th day of July, 1934.

J. CHARLES DENNIS

JOHN AMBLER

Attorneys for Plaintiff

[Endorsed]: Filed Jul. 12, 1934. [26]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND
FIXING BOND.

Upon consideration of the petition this day submitted herein by the above named defendant;

IT IS HEREBY ORDERED that an appeal be allowed to said defendant from the judgment herein made and entered upon the 12th day of June, 1934, awarding judgment in favor of the plaintiff and against the defendant for the sum of \$3,362.00, with interest thereon at the legal rate from March 12, 1932, and costs in the sum of \$35.05, and that upon the filing of a supersedeas and cost bond upon appeal in the sum of \$4000.00, that further proceedings herein be stayed pending the decision of the United States Circuit Court of Appeals for the Ninth Circuit, upon this cause.

Done in open Court this 12 day of July, 1934.

JEREMIAH NETERER

Judge.

Copy received this 12th day of July, 1934.

Approved as to form and notice of presentation waived:

J. CHARLES DENNIS,

U. S. Atty.

JOHN AMBLER,

Asst. U. S. Atty.

Attorneys for Plaintiff.

OK TOM DeWOLFE.

[Endorsed]: Filed Jul. 12, 1934. [27]

[Title of Court and Cause.]

ORDER RESPECTING TRANSMISSION OF
EXHIBITS.

Upon motion of the defendant herein, it is hereby ORDERED that the exhibits herein be not incorporated in the bill of exceptions or transcript of record, and that the original exhibits designated by either party as necessary to the appeal herein, be transmitted to the Clerk of the Circuit Court of Appeals for the Ninth Circuit.

Done in open Court this 12 day of April, 1934.

JEREMIAH NETERER

Judge.

Copy received this 12th day of July, 1934.

Approved as to form and substance and notice of presentation waived:

J. CHARLES DENNIS, U. S. Atty.

JOHN AMBLER, Asst. U. S. Atty.

Attorneys for Plaintiff.

OK TOM DeWOLFE.

[Endorsed]: Filed Jul. 12, 1934. [28]

[Title of Court and Cause.]

SUPERSEDEAS AND COST BOND
ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That LAKE UNION DRY DOCK & MACHINE
WORKS, a corporation, as Principal, and SAINT
PAUL-MERCURY INDEMNITY COMPANY OF
SAINT PAUL, a corporation, duly incorporated
under the laws of the State of Delaware, and author-
ized to transact the business of surety in the State
of Washington, as Surety, are held and firmly bound
unto the UNITED STATES OF AMERICA, a
corporation sovereign, plaintiff above named, in
the full and just sum of Four Thousand Dollars
(\$4,000.00), for the payment of which well and truly
to be made we do hereby bind ourselves, and our
and each of our successors and assigns, jointly and
severally, by these presents.

The condition of the above obligation is such that,
whereas the said Lake Union Dry Dock & Machine
Works, a corporation, defendant in the above en-
titled action, has appealed to the Circuit Court of
Appeals, for the Ninth Circuit, from that certain
judgment entered herein on the 12th day of June,
1934.

NOW, THEREFORE, if said Lake Union Dry
Dock & Machine Works, a corporation, as appellant,
shall prosecute its appeal to effect and answer all
damages and costs if it fail to make its plea good,

then the above obligation shall be void, else to remain in full force and effect.

Dated this 18th day of July, 1934.

LAKE UNION DRY DOCK & MACHINE
WORKS, a corporation,
By WRIGHT, JONES & BRONSON

Its Attorneys

(Principal)

[Seal] SAINT PAUL-MERCURY INDEMNITY
COMPANY OF SAINT PAUL
By L. S. STEWART

(Surety) Attorney-in-Fact.

Bond approved this 26th day of July, 1934.

JOHN C. BOWEN

Judge.

[Endorsed]: Filed Jul. 26, 1934. [29]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO FILE
BILL OF EXCEPTIONS.

This matter coming on regularly for hearing upon the application of Lake Union Dry Dock & Machine Works, a corporation, for an extension of time in which to file a bill of exceptions, and the court having read the stipulation of the parties hereto, and being duly advised in the premises, it is now, therefore,

ORDERED, ADJUDGED AND DECREED that the time for filing a bill of exceptions in the above

matter be and the same is hereby extended from the first day of July, 1934 to and including July 15, 1934.

Done in open court this 28th day of June, 1934.

JEREMIAH NETERER

District Judge.

[Endorsed]: Filed Jun. 28, 1934. [30]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that heretofore, to wit, on October 24, 1933, at the hour of ten o'clock A. M., the above entitled cause came on regularly for trial before the Honorable Jeremiah Neterer, United States District Judge, sitting without a jury, same having been waived by stipulation of counsel, the plaintiff appearing by its attorney, Tom DeWolfe, Assistant United States Attorney for the Western District of Washington, and defendant appearing by its attorney, H. B. Jones of Messrs. Wright, Jones & Bronson.

WHEREUPON the following proceedings were had and testimony given, to wit:

TESTIMONY OF J. H. SNYDOW.

J. H. Snyder, sworn as a witness for the plaintiff, testified as follows on

Direct Examination by Mr. DeWolfe

I am warrant boatswain in the United States Coast Guard being assigned on December 31, 1931 to

(Testimony of J. H. Snyder.)

the United States Harbor cutter Guard which is the subject matter of this action. She is a vessel 67 feet, 6 inches long and 52½ tons displacement. On December 31, 1931 she was on the plant of the Lake Union Dry Dock & Machine Works being overhauled and having repairs made. Plaintiff's Exhibit number one is signed by me and is the con- [31] tract under which the work was being done. (Plaintiff's exhibit #1 introduced in evidence.)

I was at home when the fire broke out. I live out in the North End. I had left the boat about five o'clock the previous evening. I was officer in charge.

(Two drawings, one prepared by plaintiff and one by defendant, showing the layout of the plant where the fire occurred, were received in evidence as plaintiff's exhibit #3.)

The Guard was resting on a floating dock, marked exhibit A on plaintiff's exhibit #3. (Witness identified boiler room, storeroom, joiner shop, lumber shed and floating dock). The floating dock was moored about fifty feet from the boiler room where the fire originated, alongside a wharf on which there was also located a joiner shop and lumber shed. The floating dock drifted out approximately forty feet. It was made fast by lines. The vessel was still fast to the wharf when she burned. There were about one hundred fifty feet of one-inch hose connected to a water plug located on the wharf just forward of amidships of the Guard. "We used it for our own protection on board the boat and we leave the end of the hose on board the Guard every night for our

(Testimony of J. H. Snyder.)

own protection". The hose was connected when I left the evening before, the nozzle was just apart the pilot house. The Guard's boiler and water pump were torn down and out of commission at the time. Plaintiff's exhibit #4 is a transcript of the log of the Guard on December 29th and 30th made by me and written down at the time.

Mr. JONES: I will not object to the exhibit on the ground that it is a copy. I assume that if we want to see the original we can do so. I do not think it is proper evidence. The boat was not under way. It seems to [32] me it is hearsay. I will not object on the ground that it is not the best evidence but I will object on the ground that it is hearsay and not properly admissible.

I got to the fire about six o'clock, over an hour after the fire started. The fire started about five o'clock in the morning. The Guard was approximately fifteen or twenty feet from the buildings and the shed. The shed was something like ten to fifteen feet from where the fire began. There was no fire protection when I arrived. There was a chemical cart in the machine shop. The machine shop was locked every night when I was there. The watchman, as far as I know, had the key. I never tried to get into the place and found it locked. The machine shop was right at the end of the house or shed that burned. According to our log, there was a southeast wind in the morning. As I remember it, that morning there was a very light wind.

(Testimony of J. H. Snyder.)

(Government's exhibits Nos. 2 and 5 offered in evidence.)

These are the amounts paid for repairs and the damage claimed by the government. There were two men on the boat during the evening, Henry Schafer, chief machinist's mate in charge of the engines, and boatswain's mate, first class, Louis LaPlace. Inspections are made on boats in the matter of maintenance and operation by an inspection board once a year or oftener. Plaintiff's exhibit #6 is a report of inspection held on the 19th day of December, 1930, made by Lt. John W. Kelleher and Lt. Henry C. Jones.

(Thereupon plaintiff's exhibit #6 was received in evidence.)

It is a part of the record of our boat. Page 11, question 14, refers to fire control. Two of the crew were required to remain on board at night. That was approved [33] in Washington. Exhibit #6 was made by the inspector in charge under the direction of the Board.

Rule 685 of the Regulations of the United States Coast Guard, identified by the witness, reads as follows:

“The inspector in chief shall have charge of and be responsible for the proper performance of the duties assigned to the office of the inspector in chief and shall be assisted by boards of inspection and by certain commissioned officers as may be detailed by headquarters. The

(Testimony of J. H. Snyder.)

senior officer remaining thereat and regularly attached to the office of the inspector in chief shall act as the inspector in chief."

Section 686 reads as follows:

"He shall, in the discretion of the commandant in charge, have custody of the books of the record and correspondence pertaining solely to his office."

Section 687 reads:

"It shall be the duty of the office of the inspector in chief to inquire into the condition and operation of the material and personnel of the service and record with strict impartiality in regard to all irregularities and deficiencies that may be discovered and to make such recommendations as may appear practical for the correction of any defects that may be observed."

Under the same heading, Section 688-G, appears the following:

"* * * the scope of inspection shall include all that pertains to the following: the protection of vessels, boats and buildings against fire and other damages."

As far as the record of our boat is concerned there was never any objection as to the number of men kept on the Guard.

I did not see any watchman around when I came down to the fire. He may have been around some

(Testimony of J. H. Snyder.)

other part of the dock but not at that time nor did I see him at any time or place. The chemical cart was not out. Some em- [34] ployees of the Lake Union Dry Dock & Construction Company got there when I got there at six o'clock.

Cross Examination by Mr. Jones:

I was assigned on the Guard the 15th day of March, 1930. The vessel did not happen to be in the plant for repairs when I was in charge of her. I have been on other boats that have been in the Lake Union Dry Dock for repairs in 1925 but not since then. I drew the map, plaintiff's exhibit #3, myself. It is not undertaken to be drawn to scale. The distance that the dry dock carrying the vessel drifted to the south side was only forty feet. I did not measure it. As I remember, the boats moored along the piling were longer than thirty-five or forty feet. I think there were three or four halibut fishing vessels, and they were, I should judge, about fifty feet long. When I got there the dry dock carrying the Guard was in this position (indicating). The two men on watch told me they had cut it adrift. I only know what was reported to me. The Guard was burned in quite deep. There were some streaks of scorching in the engine room. The vessel was charred deep enough to spoil the planking. It had to be replanked. I think there is a provision in our regulations that we shall keep on board at all times a sufficient number of men to handle these boats in any emergency that may arise. In my judgment two

(Testimony of J. H. Snyder.)

men were sufficient to handle the vessel as she rested in dry dock and to move the dry dock if necessary. I did not think we had the right to move the dry dock. I considered two men sufficient to extinguish any fire or to take care of anything out of the ordinary that would occur on board the Guard. I think two [35] men were sufficient to cast the dock loose and guide the dock under the circumstances that existed. I do not know of any reason why two men on board could not have cast off the line and immediately move the dock away from the scene of the fire. Ordinarily we have fire hose for fire protection on the boat and have our own pumping equipment. We use 1½ inch hose. I do not know what pressure. While lying at the dock we had a hose of the Lake Union Dry Dock available in case of fire. It was connected to the hydrant that was right on the face of the dock. I am not acquainted with the character of the chemical extinguisher or extinguishers at the plant.

Redirect Examination by Mr. DeWolfe:

We could not operate our water system when on dry dock.

Recross Examination by Mr. Jones:

The control valve for the hose of the Lake Union Dry Dock Co. that was connected on the wharf was right near the connection. I tried it every day and it was working all right and there was water on the line. I used the water practically every day. There was a strong pressure.

(Testimony of J. H. Snyder.)

Redirect Examination by Mr. DeWolfe:

It was a one inch hose used to wash the bottoms of vessels to be painted on dry dock. It was a one inch canvas and rubber hose, not such a hose as is ordinarily used for fire protection.

Recross Examination by Mr. Jones:

The fire hose used on ships is usually a cotton [36] covered hose. This hose took all the pressure I put on it.

Redirect Examination by Mr. DeWolfe:

I considered that the hose would carry water enough to take care of a fire on board the Guard.

Witness excused.

Plaintiff's exhibit #7 was introduced in evidence showing the damage to the boat after the fire in the sum of \$3362.00. It shows a list of damages after a marine survey was made by the Marine Board of Underwriters and a lieutenant of the United States Coast Guard.

TESTIMONY OF LAPLACE.

Louis LaPlace, sworn as a witness for the plaintiff, testified as follows on

Direct Examination by Mr. DeWolfe:

My name is Louis LaPlace. I am bos'ns mate on board the Coast Guard Harbor cutter Guard and

(Testimony of Louis LaPlace.)

was so employed in that capacity on the 30th day of December, 1931. The fire occurred about four o'clock in the morning. I was asleep at the time in the cabin in the after part of the ship. I was awakened by someone hollering "fire" about 4:15 o'clock in the morning. There was no watchman around that I know of at the time I was there. When I awoke I found the boiler room was on fire. It was about fifty feet away from the boat. The fire got over to our boat nearly instantly. As soon as it got started it went over quickly. Schafer, chief machinist, was with me. I was there first. I went on board to get Schafer so he could help me. He was asleep. Right away I went up and got a hose on our deck and tried to put the fire out on the [37] company's dock. It was the same hose the witness Snyder testified he hooked up the night before. The fire was blazing through the building at that time and it did not do us any good. There was not sufficient pressure to put the fire out so Schafer and I went and got the dinghy and took it out of the shed and took it out on to the dock and by the time we got back the dock was blazing. The shed was approximately fifteen feet from the dock and about fifteen feet from the boat. It was a little above the level of the boat. The boat was in dry dock and this shed was on top of the dock. The flames that caused the boat to ignite came from all over. Burnt wood was coming out. They just popped up in the air and came down. Our engine was torn down, and we could not pump any water

(Testimony of Louis LaPlace.)

and we were on the dry dock. There were no hooks around or oars which we could use to shove the dry dock out. We went aboard, took the skiff down and went in to the shed and put it on the dock and tried to push the floating dock away. I cut the mooring lines with Mr. Schafer's help. I got burned on the back of my neck. We got the dry dock unloosened. Schafer and I were on the dry dock—it did not drift far away. The end was facing the street. It just drifted across the small passageway, approximately sixty feet, I would say. I could not get back after that—it was too hot for me. I would not say whether the hose burned up or not. The ship was on dry dock and we dipped water out of the lake and put it on the deck. Schafer would dip the water out and I would put it on the deck and we finally got the fire out. I did not see any watchman around that night and did not receive help from anyone. The fire department put the fire out on the Lake Union Dry Docks. The [38] fire boat was playing on the machine shop. They had water turned on to keep the machine shop cooled off. I would say that hose was about one inch. When I woke up about four o'clock in the morning the fire was in the boiler room coming through the top and through the sides, too. The flames were going up fifteen or twenty feet in the air. About fifteen minutes later the flames reached the boat where I was. The fire was not blazing in the open dock. The buildings were pretty close together. You could not see it on account of the smoke but all of a sudden

(Testimony of Louis LaPlace.)

it swept across to our boat. I do not know just how long before the flames got to our boat but I would say around fifteen or twenty minutes at the most. During those fifteen or twenty minutes we were trying to get the floating dry dock away by cutting the lines and pushing it out. As soon as I got the skiff out of the shed and took it back again, I started to try to cut the lines. When I first awakened, I tried to put the fire out over in the boiler room and when I could not do that, I took the skiff out on the dock. The dry dock was on fire before the Guard was. Those posts on the side and the stanchions were afire. They caught fire as soon as the fire got there—about fifteen minutes. The dry dock was on fire a couple of minutes anyway before the Guard was on fire. The flame was getting pretty hot.

Cross Examination by Mr. Jones:

I do not know who it was that was hollering “fire” that awakened me. The first was making considerable noise when I woke up. I heard the yell and the cracking noise about the same time. I went out on the boat and saw the boiler room had flames coming out of the top and sides. It [39] was possibly ten to fifteen feet between the boiler room to the adjoining shed on the west. I took the hose which was attached to the hydrant on the dock off our ship and tried first to put the fire out. I only got across this far—it was too hot. This hose was the hose of the Lake Union Dry Dock Co. which was furnished for our own protection. I got to within about fifteen or twenty feet of the

(Testimony of Louis LaPlace.)

boiler room with the hose. It was already attached. Mr. Schafer was with me. We tried to put the fire out in the boiler room with this hose for about five to seven minutes. The hose did not have much effect on the fire. There wasn't very much pressure. I could throw the water with the hose twenty-five or thirty feet. We could get it on to the fire all right. Mr. Schafer was with me all the time. Then we left and came to our dinghy which was stored in this shed (which witness marks "X" on the drawing). The dinghy is a life boat. We took it past here and we put it right about here (indicating). One man can drag the dinghy and both of us took it. I suggested taking it out. It took us about three minutes. I jumped on to the dry dock and cut the forward line. We pushed it off with our hands. We both tried to push her away. The fire was on the deck, the canvas covering the engine room. It was on the side of the wheelhouse and the mast was on fire. We put the fire out dipping water from the lake with a bucket. When we came to take the dinghy out, we dropped the hose. It was not necessary to play the hose on our boat at first. I did not think our boat was in danger at first. At the time we came back here and came to get the dinghy I knew it was in danger. We got the dinghy because I thought we could save both of them. I thought we had time to save the dinghy and also to shove this away. As soon as we got the boat loose, the forward end

(Testimony of Louis LaPlace.)

went into the chammel. We pushed it away. It went [40] very slowly. It was heavy. It kind of drifted across there, sixty feet at the most. The stern of our boat was still up against the dry dock. The flame was down there (indicating). The stern was here (indicating). The fire was confined here (indicating). When we swung the forward end around, even with the after end made fast, we were far enough away from the fire to work on the fire. By this time the fire department was there. I was on board the Guard when the fire department arrived. The dry dock was pretty close to the dock. There was another dock there that would prevent the dry dock from going farther across. The front end of the dock was against the other side and the other end near the other dock just as far as it could have gone. The dry dock was catty corner across. The front end moved faster. I move it out first. It moved while I was cutting the other rope. From the place where the fire occurred to the closest boathouse on the other side of the waterway was sixty to seventy feet. There was some piling that the boats were made fast to. The boats so moored were headed into the dock. The first department arrived about 4:30 o'clock I imagine. Something like twenty to twenty-five minutes after I awoke. I was on board the boat trying to get the fire out when the fire department arrived. That was after I had gone over to the boiler room and tried to get the fire

(Testimony of Louis LaPlace.)

out and could not do so and then brought this boat over. [41]

Q. (By Mr. Jones, continuing) If you had cut your boat loose immediately you would have avoided your damages.

A. I did not figure when I first stood there that it would burn the boat up. It was not any of my particular business to move the dry dock anyway.

Q. If you had cut the boat loose immediately you would have been far enough away not to be burned?

A. We could only get over here (indicating).

Q. You would not have been burned here (indicating)?

A. The stern might have got on fire.

Q. Well, at any rate, if you had cut her loose immediately she would have had plenty of time to have drifted across here (indicating) before the fire got too hot.

A. We probably could have if we had pushed it away right away.

The COURT: If he had sat up all night, it would not have burned. If he had been awake before the fire started it would not have burned.

Mr. JONES: That is true.

The COURT: The question is, what would an ordinary person under these circumstances have done.

Mr. JONES: That is the idea.

(Testimony of Louis LaPlace.)

Q. (By Mr. Jones, continuing) Didn't it occur to you to move the floating dock as soon as you saw the fire?

The COURT: He thought he could put the fire out.

The WITNESS: We thought we could put the fire out.

Q. (By Mr. Jones, continuing) Who was in charge of the boat?

A. Schafer was in charge of the engine room and I was in charge of the deck at the time.

Q. Did it occur to you to turn the hose on the Guard so as to keep it from catching fire?

A. No, sir.

Q. This hose that you used, that is the Lake Union Dry Dock hose?

A. Yes, sir. [42]

Redirect Examination by Mr. DeWolfe:

The dry dock is about 32 feet by 70 feet.

Witness excused.

TESTIMONY OF HENRY SCHAFER

Henry Schafer, sworn as a witness for the plaintiff, testified as follows on

Direct Examination by Mr. DeWolfe:

My name is Henry Schafer. I am employed as chief machinist's mate on the Guard and was so employed on December 30, 1931. I was awakened

(Testimony of Henry Schafer.)

about four o'clock in the morning of that day. When I got up the fire was burning on the dock about fifty feet catty cornered from where we laid. The fire was in the boiler room on the dock. Mr. LaPlace was with me. He grabbed the hose and we tried to put the fire out. It got so hot, he said to me, "We had better take the life boat out of the shed before it burns up", and when we got back we tried to get the boat away from the dock. We tried to shove the boat away. We only had our hands. There were no boat hooks around on the float. The hose we used was about one inch in size. There was no other fire protection around the hose that I saw. When I got up the fire was burning right aft of [43] the boiler room where they keep steam. It was quite a big fire. We could not get so very close because the hose would not reach, possibly ten or fifteen feet, I should judge. We put all the pressure on the hose and the water reached to where the fire was. It had not yet broken through and was still boarded up so I do not know whether the water reached the fire itself which was inside the building. It was not long before it got out of the building. We just threw the water on the outside until the flames got out of the building. When the flames broke out, it got so hot we could not stand it any longer and we went to get the dinghy. There was no fire on the Guard then. The fire occurred on the Guard not very long after we got the dinghy. I do not know exactly how long it was. I saw the stanchions were burning and those tarpaulins which cover up over

(Testimony of Henry Schafer.)

the hatches were on fire. They were blazing and we threw them off. We tried to shove the boat out. The hose was no good to us and you could not reach it with a hose. And then what fire was burning we took and put it out by dipping water from the lake. The planking on the side was scorched and burned. It was all black and had to be replaced.

Cross Examination by Mr. Jones:

The hose was about one hundred feet long. I was with LaPlace when he tried to put the water on and know he had the hose squirting at it. It was connected to a faucet right astern of the dry dock where the float was tied up to the wharf. There was just one place where there was a fire hydrant. We carried the dinghy out of the shed about one hundred feet right alongside of the machine shop. There was no fire on the Guard [44] when we took the dinghy out. We did not think of the Guard being in danger until it broke through. There was just a little wind, kind of off from the Guard, more towards the buildings where there was a fire. I did not pay any attention to the wind. It got so hot I could not stand to push the floating dock from the dock. If we had started at once to cast the Guard from the dock perhaps we could have gotten it away without damage, but we did not think of it. Mr. LaPlace said we had better get the dinghy out. By that time the fire was

(Testimony of Henry Schafer.)

through the shop. One of these big scows is very hard to push out especially if you haven't anything to push it with. If the dinghy was in danger the Guard might have been in danger. The dinghy was down in the shed something like twenty feet from the fire. The dinghy was in the shed right across from the Guard on the dock. If the fire had gotten to the dinghy it would have tended to go to the damage of the Guard. It went so fast you did not have time to think. I did not see any chemical extinguishers around the plant nor in the shed where the dinghy was.

Redirect Examination by Mr. DeWolfe:

There was some sawdust in the joiner shop. It was all scattered around. I could not tell you how much.

Witness excused.

(Government rests)

Mr. JONES: I move for the dismissal of the government's case, on the ground that there is no showing upon which to predicate liability against the defendant. The ordinary rule, of course, even considering this as a bailment, when it develops that the failure to return the article bailed or that damage has resulted from an occur- [45] rence which is ordinarily attributable to negligence, such as fire, there is no presumption of fault on the part

of the bailee, and it is incumbent upon the bailor to go further and show that the fire was attributable to the negligence of the bailee.

The COURT: Let me ask this. The contract, I believe, is admitted?

Mr. DeWOLFE: Yes, sir.

The COURT: The motion must be denied.

Mr. DeWOLFE: I would like to renew my offer of this portion of the log.

The COURT: Let it go in.

Mr. DeWOLFE: This is Government's exhibit No. 4.

(Whereupon Government's exhibit No. 4 was introduced in evidence.)

Mr. JONES: I would like an exception to the Court's ruling.

The COURT: Noted.

Mr. JONES: I think I should go further and amplify my motion. That in addition to the matter of presumption, on the matter of the law of bailment, I think it affirmatively appears from the showing that the plaintiff has made that the damage could have been prevented by the exercise of reasonable precaution on the part of the men on the ship and for that reason the proximate cause of the damage is the failure to take due and proper care to minimize the damage. I think that affirmatively appears.

The COURT: Upon that phase of the question, I must say: I do not think your position is well taken. I think, so far as a reasonable conduct on

the part of these seamen, they showed about as contiguous conduct as could possibly be conceived. They seemed to act in a rightful sort of way, [46] just what reasonable men would be presumed to do. The first thing they did was to fix this hose and they tried to put the fire out, and when they saw they could not do that,—there was material on the dock, and if there was any wind it was away from the Guard, and they could reasonable conceive the idea that this was the thing that was in danger, and that was the first thing they did. I think they did exactly the same thing that an ordinarily intelligent person would do, and they came back and got the row boat. I think, as far as these seamen are concerned, they exercised more consecutively reasonable steps than is usually developed, and I think they showed a splendid presence of mind. So that on that phase of your motion, there is nothing to your motion.

Mr. JONES: I would like an exception and will submit proof on that matter of the direction of the wind.

The COURT: Allowed. Proceed with the defense.

TESTIMONY OF OTIS CUTTING.

Otis Cutting, sworn as a witness for the defendant, testified as follows on

Direct Examination by Mr. Jones:

My name is Otis Cutting. I am vice president and general manager of the Lake Union Dry Dock

(Testimony of Otis Cutting.)

Company and have been connected with the Company ever since it has been located at its present location which is about thirteen years. Referring to plaintiff's exhibit #3, the sheet marked "B" with colored markings, labeled Lake Union Dry Dock and Machine Works, there is an open water way between the wharf to which the dry dock was moored and the wharf to the south of it, of about one hundred fifty feet. It ex- [47] tends about one hundred and fifty feet from the street, of which about fifty feet of the southern portion was occupied by vessels, leaving about one hundred feet of clearance. You have one hundred feet of clearance from the face of the wharf where the United States Coast Guard vessel was in dry dock to the boats moored here (indicating). The boiler shop was about fifty feet from the face of the dock where the Coast Guard boat was located. The dry dock with the Guard on it lay at the position marked on Exhibit #3, "c". The boiler room where the fire originated was about fifty or sixty feet from the Guard, about thirty feet from the edge of the wharf and about fifteen feet from the adjoining shed. I was there before the fire was out. The shed referred to was what we call a mill and there was some lumber stored above. In the clear space in the shed were berths for building boats. The dinghy was stored in the middle of the shed, or in the middle bay. It was two bays over from this end of the house. The dinghy was taken by the two men beyond the machine shop about one hundred twenty feet from

(Testimony of Otis Cutting.)

where it was stored. We have a chemical extinguisher in each one of these bays. These bays are twenty feet wide. There are five posts and a chemical extinguisher at each post. These are marked with the letter "X". The extinguishers were on the outside of the shed and three of them were there, each of two and one-half gallons capacity. They are operated by turning them over and the acid in the contents generates the gas. I presume that the Guard was advised they were there. Most people know how to use them. The extinguishers are primarily for the protection of the plant. They have prevented fire many times. We also had a cart extinguisher here which I will mark with a capital [48] "Y". It holds fifty gallons and was not locked up. It always stands there. I do not think the Guard was advised of that. This was likewise for our plant. We depended upon the chemicals because they are far more efficient than water as fire protection especially for boats by the dock. There are chemical extinguishers all over the plant. They are still there. They are of two and one-half gallons capacity. We had a generous number of extinguishers all over the plant. They have saved fire on several occasions, and one of those fire extinguishers has put out fire just like magic. I have operated those extinguishers and they are more effective than a two inch stream of water. Our water system consists only of a small hose used for washing down boats. It is city water and normally of one hundred twenty-five pounds pressure. It would throw water farther than twenty

(Testimony of Otis Cutting.)

or twenty-five feet. It will throw water at least sixty or seventy feet—a one inch stream of water. That is, a one-inch inside diameter. The hose could squirt from one dock to the other and the dock is forty feet long. On the morning of the fire I was called about five o'clock and it must have been 5:30 o'clock when I got down there. What wind there was, was from the north and this building fifteen feet away was not touched. The fire was toward the Guard and kind of from the north. One man can move these floating docks. I have moved them alone all over the plant. I did it by taking a pole and pushing them. In this case the wind would have moved the dock away without any pushing in this particular case. At the time I got there the dry dock had been cut entirely adrift and had been swung out something like this (indicating) according to my recollection. I think the stern was still moored to the dock. I am not clear about [49] that. I did not get over that part. I did not get to see clearly just what was over there. I do not know whether it was across so that it was against the piles or boats on the other side of the waterway.

Q. What is your practice with relation to maintaining a fire in this boiler room and the conditions under which fire is maintained, or precautions that are taken about it? What is the occasion for any fire at all?

The COURT: Is that material?

Mr. JONES: I do not know. I am not quite sure what counsel's contention is. If it is presumed that

(Testimony of Otis Cutting.)

the fire arose from negligence, if that is his contention.

The COURT: I do not think the court is interested. The question is whether sufficient precaution was taken after the fire broke out.

Mr. JONES: If Your Honor does not regard that as material I will withdraw it.

The COURT: Is that the idea, Mr. DeWolfe?

Mr. DeWOLFE: I think that is right. [50]

The plant maintained a watchman, Mr. Clark, and he was there that night. We have had fire originate in the boats and sheds quite a number of times before. The fire department that would first respond to our plant would be the one on Fairview Avenue. I do not know what equipment is at that station. From previous experience it takes the fire department about four minutes ordinarily to get there in response to a call.

Cross Examination by Mr. DeWolfe:

The fire department did not get there that night in about four minutes. Mr. Clark has not been employed by our company for about one and one-half years. I only know he was present on the night of the fire by hearsay. I did not see him personally. The chemical cart is only kept inside in cold weather. It was not in the shed at seven o'clock in the morning. It was out on the wharf. When it goes down to the danger point, twenty-five or thirty degrees, the fifty-gallon chemical cart is kept inside. It is put under cover. On the night in ques-

(Testimony of Otis Cutting.)

tion it was raining. The cart is locked up in the machine shop in extremely cold weather. The watchman had a key for the machine shop that night. There is always some sawdust in the joiner shop. We had that kind of work. We always keep a number of poles and hooks around to shove the barges off. They are kept where the ships are raised and lowered. One man can push the dry dock. It is 32 feet by 72 feet. [51]

(Plaintiff's exhibit #8 introduced in evidence.)

The two and one-half gallon chemical tanks would not have done a great deal of good after the fire got out of the boiler shed. If they had used such a tank before the fire got out of the boiler room it would have done good. If our watchman could have gotten to the fire before it was too hot he could have done a great deal. Of course, as soon as he saw the fire he could only do one thing at a time. There are three chemical extinguishers twenty feet apart. There are two others on the main building about seventy-five feet from the boiler house. One of these was about seventy-five feet from the Guard and the other about one hundred feet. They are placed all over the plant. We have nine altogether, three in this place, two in the main office building, the rest of them were in the shop for use in general work, locked up that night.

Redirect Examination by Mr. Jones:

About seven o'clock in the morning, on the wharf, about daylight, on hearing a report that the chemi-

(Testimony of Otis Cutting.)

cal cart was locked up, we went out to see if it was locked up and we found it full of cinders. From my examination I found that it had not been locked up. I do not know if it was used.

Witness excused.

TESTIMONY OF JOHN L. McLEAN.

John L. McLean, sworn as a witness for the defendant, testified as follows on

Direct Examination by Mr. Jones:

My name is John L. McLean. I am president of the [52] Lake Union Dry Dock & Machine Works. I try to visit the plant every morning on my way downtown. I am pretty generally familiar with conditions around the plant at the time the fire occurred. I think Mr. Cutting has covered all the equipment we had there; there were five extinguishers all over the plant. I have considered many times, as an officer of the company, the dangers of fire and have considered what precautions should be taken to guard against danger. I had done so before this fire occurred. We had inspections there at frequent intervals by the City Fire Marshal's office in addition to taking care of the chemicals and inspecting the buildings once a year. Some fire extinguisher company advised us what precautions to take and insurance companies have many times inspected it with reference to fire protection. These inspections

(Testimony of John L. McLean.)

have always generally been with relation to the safety of the plant and boats belonging to other people, et cetera.

Q. You have had considerable experience, besides, where it originated on the boats?

Mr. DeWOLFE: I object to that as immaterial.

The COURT: Sustained.

Mr. JONES: Exception.

The COURT: It is immaterial.

Mr. JONES: I think it is, Your Honor.

The COURT: The objection is sustained.

Mr. JONES: Exception.

We have taken into consideration in affording fire protection the possibility of fire on vessels that were in the plant. After these inspections and recommendations we complied with such things as were recommended by authorities in respect to fire protection to the extent they were practicable and safe. I do not think I can recall any recommendations that we did not comply with. [53]

Cross Examination by Mr. DeWOLFE:

I do not know of my own knowledge whether the fifty-gallon tank was in the shed. I was not there at the time of the fire. I could not answer whether the fifty-gallon chemical tank was locked up that night or not. I saw it outside but do not know whether it was locked up at the time of the fire.

Witness excused.

TESTIMONY OF E. L. SMITH

E. L. Smith, sworn as a witness for the defendant, testified as follows on

Direct Examination by Mr. Jones:

I am Fire Inspector of the Seattle Fire Department and was connected with the Fire Department in December 1931. In response to a call of fire at the Lake Union Dry Dock plant the following engines would be the first to respond: Engine Company #15 at Minor and Virginia; Engine Company #22 at Eleventh North and Howell; Engine Company #25 at Harvard and Union; Truck Company #10 at Harvard and Union. It would take probably about three or four minutes for the first company to respond to an alarm at that location.

Witness excused.

TESTIMONY OF T. W. CLARK

T. W. Clark, sworn as a witness for the defendant, testified as follows on

Direct Examination

I have no connection with the Lake Union Dry Dock and Machine Works at this time. It has been over a [54] year since I worked for them, about eighteen or twenty months. I worked for them probably five or six months after the fire. I had been with them nearly two years at the time. I worked as a machinist part of that time. At the

(Testimony of T. W. Clark.)

time of the fire I was night watchman and as such customarily went around every hour and punched the clocks and then at the end of the next hour I would punch them again and would make the rounds that way. Depending on how fast you are going, it would take you about fifteen minutes to go to the end of the docks and get back. On this particular night I made rounds as usual. The fire occurred a little after five o'clock. That is when I first discovered it. I had been in the boiler room at the usual time previous to the discovery. I was in the dockmaster's office at the time of the fire. It is about one hundred twenty-five feet from the boiler room around at the other end,—about one hundred twenty-five feet from where the fire started. I had been in the dockmaster's office about three quarters of an hour when I learned there was a fire. I made my rounds and punched the clock and then I would stay in the dockmaster's office until I made the next round. I was sitting and reading and Mr. Gallagher said there was a fire in the boiler room. As soon as he came in he went and telephoned and called the fire department. I ran over to the other gate to open it so the fire department could get in. There are two large gates and one small one to the plant. For the location of this fire, the department would use the north gate. It was closed and locked. I have been there before when fire alarms were turned in so know how long it ordinarily takes the fire department to get there. Usually from three to

(Testimony of T. W. Clark.)

five minutes. Ordinarily about five minutes. I immediately went over and unlocked the north gate. When I came out of the room I could see the red shine in the boiler room. It was just beginning to break through the roof as near as I could figure. I was in a hurry. I ran out to open the gate and I did not look much at it. I was at the gate just long enough to unlock the gate and open it and come back. I came back and saw they were moving the government boat away from the dock. When I left the gate and came back to the boiler room the fire was breaking through the roof and was spreading over toward the adjoining shed towards the open space. I then ran down an alley way where there was a fire hose, about a two-inch fire hose. There was a two-inch connection in the shed; I tried to use that but the flames came out the roof, came up to a ridge like that and the draft carried the flames. It carried the flames along there so I could not use it. I did not get the other hose out of the floating dock. The other men were working at that. When I said they were moving the boat, I did not mean the dinghy.—I meant the large boat. The fire hose that I tried to reach was a canvas hose and it was located half way between the boiler room and the machine shop under the shed. It was under the shed. It was a standard fire hose. I did not use it because it was too hot. The flames were coming through the building there and it drove me out. There was a large chemical apparatus there at the

(Testimony of T. W. Clark.)

time of the fire at the corner of the machine shop about the location marked "Y" on exhibit #3. It was out in the open. I considered the advisability of using this but I figured it was useless at the time, as the fire had gotten such headway. Mr. Gallagher was around there and there was a man living in the house at the south gate. I did not get over to [56] where the Coast Guard vessel was. I saw they were moving that out and the fire department seemed a long while in coming and then I went to telephone again and then I saw they were coming. I could not say how long it was before the fire department got there—probably about five or ten minutes. It was over five minutes I know. I do not know for sure whether the Coast Guard boat had been moved from the dock when the fire department got there. I know when I got back I saw the dock moving out. I mean when I came back from trying to get the hose I saw the floating dock moving out. They were using the rubber hose on the side of the boat when the dock was moving out. There was a slight breeze that was blowing from the north or northeast, if at all, toward the boat.

Cross Examination by Mr. DeWolfe

The wind was blowing from the fire toward the boat. The boat was on the south side of the building. It would take me about fifteen or twenty minutes to make my rounds and the other forty-five minutes would be spent at the dockmaster's office reading or doing anything I wanted to. I

(Testimony of T. W. Clark.)

went on duty at twelve o'clock. Anderson was on the previous shift. If I remember right, there were three clocks to punch. The canvas hose was about fifty feet from where the Guard was moored not quite over on the other side of the machine shop. It was under the lean-to on the shed. It was on a different side of the shed. I did not do anything with the chemical extinguisher that night. It could not have been gotten over for the Coast Guard men to use it. The fire was here (indicating) and there is the machine shop and the fire hose that I spoke about trying [57] to get, I tried to get that but the heat drove me out. It would be impossible to get that chemical cart through there to the fire. The chemical cart was not locked up the night of the fire. The chemical extinguisher was not locked up while I was employed at the Lake Union Dry Docks that I know of. It was locked up sometimes in extremely cold weather. Mr. Gallagher lives in one of the boats on the south side of the plant and is not employed by the Lake Union Dry Dock and Machine Works that I know of and is not nor at the time of the fire was not employed by the Lake Union Dry Dock Company that I know of. The man living at the gate house was likewise not employed. I had not been over to see Mr. Gallagher nor had he come to visit me before the fire. I went into the dockmaster's house about ten or fifteen minutes after four o'clock. I punched the clock at four o'clock and then came back to the boiler room

(Testimony of T. W. Clark.)

to see that everything was all right and left the time clock in the boiler room and from there went to the dockmaster's house. The first time I discovered the fire it was a little after five o'clock. I fixed this by the fact that the time clock was stopped at that time. The time clock said 5:15 o'clock as nearly as I can recollect. It stood at 5:15 when it was found after the fire was out. I saw the fire for the first time after five o'clock and after I had been in the dockmaster's office for forty-five minutes.

Redirect Examination by Mr. Jones:

When I went out and opened the gate and then came back to the fire, it had gained so much headway that I could not have used a fire extinguisher. The fire de- [58] partment had to come in through the gate I opened as the fire plug was over there.

Recross Examination by Mr. DeWolfe:

The Guard could not use the chemical apparatus.

Witness excused.

TESTIMONY OF JAMES LUPTON.

James Lupton, sworn as a witness for the defendant, testified as follows on

Direct Examination by Mr. Jones:

I lived near the plant of the Lake Union Dry Dock & Machine Works at the time of the fire. I live near what they call the south gate. I was not

(Testimony of James Lupton.)

connected in any way with the Lake Union Dry Dock & Machine Works. The first I knew of the fire was when Mr. Gallagher came and knocked at the door and called "fire". It was just getting daylight so it must have been around five o'clock. I got up right away. The fire was going pretty good—coming out of the roof. The fire department had not arrived. It was five or six minutes before the fire department arrived after that. At the time it arrived the fire had progressed pretty good. I think it had gone from the boiler room to the adjoining shop,—I really could not say just where it was. There was a fire extinguisher about every seventy-five feet. I did not see what the Coast Guard men were doing. Mr. Clark, the watchman, was helping me and the fireman. There was only one fireman there before the fire department came. He was waiting. There was nothing one man could do. I do not know just exactly where the fifty [59] gallon extinguisher was at the time but I know there were two of them on the dock out in the open.

Cross Examination by Mr. DeWolfe:

I could not say where the two two-wheeled carts were that night. I surmised they were fire extinguishers. They may have been something else. They may have been gasoline pumps. I got there before five o'clock.

Witness excused.

TESTIMONY OF JOHN GALLAGHER.

John Gallagher, sworn as a witness for the defendant, testified as follows on

Direct Examination by Mr. Jones:

I was at the Lake Union Dry Dock plant the night of the fire. I was on the barge on the south dock. I had no connection with the Dry Dock Company. I will mark with a capital "G" the approximate position of my boat. There were two barges there. I was on the south. I happened to be up and so discovered the fire. Some friends came up to see me. They were going home and I saw the flames shooting out. They had not broken out of the boiler room yet. I ran over to the watchman's office about one hundred fifty or two hundred feet away. Mr. Clark was reading a paper. He had not noticed the fire at that time. I do not think he could see from where he was sitting. I do not think there was any noise to attract his attention. When I came out of the office the fire had broken out. After I had gone to Mr. Clark's office I called the boys on the Coast Guard. I telephoned the central and told her there was a fire. I told her there was a fire on the Lake [60] Union Dry Docks and asked her to sound the alarm. Mr. Clark had everything in readiness for the fire department to come in. I went down to the Coast Guard. I awakened the boys and told them there was a fire. After I called the men on the Guard I passed between the joiner shed and the boiler room. At the time I called out "fire" the fire had not jumped from the boiler room to the joiner

(Testimony of John Gallagher.)

shop. The Coast Guard boys must have gotten up. I did not pay any attention. I went out here (indicating) to get the car parked between the boiler room and the joiner shed out of the way so that the fire department could get at the fire. I do not know how long it took for the fire to jump from the boiler room to the joiner shop. I did not notice what the Coast Guard men were doing during this time. I did not see them take the small boat from the shed and take it down, nor did I notice when they undertook to cast the dry dock off and move it out of the way. There was very little wind. It was blowing toward the Coast Guard. It was blowing from the boiler room toward the Coast Guard. I would say it was about ten or fifteen minutes before the fire department responded. I called them the second time. When they got there the fire was in the joiner shop and burning pretty heavy. I have seen the big fire extinguisher at the plant close by the machine shed. I could not say whether it was there at the time of the fire.

Cross Examination by Mr. DeWolfe:

I called Mr. Clark about 4:15 or 4:30 o'clock. I did not look at my watch. We were having a party with a little moonshine liquor,—one woman and three men. We had a pint for all of us for the whole evening. I had gotten there about two o'clock and had had nothing to drink before [61] I arrived there. I had three or four drinks but not enough to make me intoxicated. The drinks were not very big. It was 4:15 or 4:30 o'clock when I called Mr.

(Testimony of John Gallagher.)

Clark. The fire department came about fifteen minutes after I called them the first time. Neither myself, Mr. Clark, Mr. Lupton or any of us besides the Coast Guard worked any of the fire equipment.

Redirect Examination by Mr. Jones:

I was not drunk at any time during the evening of the fire and Mr. Clark was not with me that evening.

Witness excused.

TESTIMONY OF J. A. BALE.

J. A. Bale, sworn as a witness for the defendant, testified as follows on

Direct Examination by Mr. Jones:

I am dockmaster for the Lake Union Dry Dock and Machine Works and have been with them since 1925 and was working in that capacity in December 1931 when the fire occurred. I am familiar with the fire equipment around the plant. We have two large chemical wagons, that is, one about 30 and one 40, or else one 40 and one 50, with two wheels and several small ones. One is kept by the machine shop and one by the sales office. Capital "Y" on exhibit #3 indicates the one located by the machine shop. The location of the other is indicated by a capital "Z" and then we have small extinguishers. I have had experience with fires. We have not had many. We have had gasoline fires and the extinguishers are effective to extinguish fires even of considerable size.

(Testimony of J. A. Bale.)

I am familiar with other smaller [62] plants in the city as to fire protection. Our extinguishers are of similar size as those in other plants. There was one hose lying abreast of the Guard or pretty close to amidships of the Guard,—a one-inch hose and we had one hydrant on the opposite side of the building from the dock approximately one hundred feet across, and not over one hundred or one hundred twenty-five feet the shortest way around. We had a fire hose there fifty feet long. This hose itself would not reach the Coast Guard boat. The water would reach the boat. It was a five-eighths nozzle at the end and a two-inch hose. I would say that the one-inch hose would throw a stream of water one hundred or one hundred fifty feet. The fire hose would throw a stream about one hundred or one hundred twenty-five feet. I remember the way the Coast Guard boat was docked at that time. I got to the fire about 5:30 or 5:35 A. M. The fire was pretty well along. It was nearly out with the exception of near the boiler room. The flame was nearly all destroyed. There was very little wind. I did not even notice there was any wind. It would influence the fire very little. There was nothing about conditions with respect to the way it had burned and what had burned that would give any indication as to the way the wind was blowing. The Coast Guard boat was right alongside the slip across the piling. When there is no wind it is very easy to move the dry dock. One man can move it. It is much better for two. Of course, when it is windy it is harder to

(Testimony of J. A. Bale.)

move, even with an adverse wind. I have never had over two men to move the floating dock. It would take about five or six minutes to shove the dock across the water. There is only one line on each end and all we have to do is to let it go and shove. There were pike poles at the head of the dry dock about [63] one hundred twenty-five or one hundred thirty feet away from where the boat was. There was not much lumber in the joiner shed. There are always some pieces that could be used for poles in the joiner shed. I did not talk with any of the Coast Guard men. The large fire extinguisher was not locked up. We had to clean the cinders out of the box where the hose is on the large fire extinguisher and from that I know that it was not locked up. I saw it next morning a short time after we started to clean up. Defendant's exhibit A-1 was taken straight across from the gas station looking toward where the boiler room was; this was taken of course, after the fire had occurred. The Coast Guard rested at that time about ten feet forward of where the dry dock lays in the picture.

(Defendant's exhibit A-1 admitted in evidence.)

Defendant's exhibits A-2 and A-3 represent dry dock number two, the dry dock the Coast Guard boat was on, taken after the fire, showing the character of the burn. Defendant's exhibits A-4 and A-5 are a picture of the Coast Guard boat.

(Defendant's exhibits A-2, A-3, A-4 and A-5 were admitted in evidence.)

(Testimony of J. A. Bale.)

Cross Examination by Mr. DeWolfe:

From the evidence I saw of it, it was a pretty good fire. We never had a fire like that before and never had opportunity to test our particular fire equipment out before.

Witness excused.

[64]

Thereupon both sides rested and defendant presented to the Court and filed a written motion for judgment in its favor, a copy of said motion being hereto attached, marked Exhibit "A" and by this reference made a part hereof as though fully set forth herein. The Court requested that the testimony of the witnesses be transcribed and submitted, together with findings to be proposed by respective parties and memoranda of points and authorities. Such proposed findings and memoranda were submitted by each party and thereafter, at the request of the Court, the matter was called up for oral argument, following which the Court rendered a written decision making special findings and directing judgment in favor of the plaintiff, which was filed on December 26, 1933.

A copy of defendant's proposed findings of fact, the original of which was filed with said Court on the 26th day of December, 1933, is attached hereto, marked Exhibit "B" and by this reference made a part hereof as though fully set forth herein.

Subsequent to the filing of the special findings of the Court, and on the 30th day of December, 1933, defendant made and filed exceptions to the said findings of the Court, and made a request for additional findings. On the 12th day of June, 1934, defendant's exceptions to the Court's findings were noted and allowed. On the same date, the Court having declined to make additional findings as requested by defendant, the defendant in open court duly excepted thereto, which exceptions were noted and allowed.

A copy of defendant's exceptions to findings and request for additional findings, the original of which was filed with said Court on the 30th day of December, 1933, is hereto attached, marked Exhibit "C" and by this reference made a part hereof as though fully set forth herein. [65]

CERTIFICATE OF COURT TO BILL OF EXCEPTIONS.

Thereafter, on the 12th day of July, 1934, and within the time allowed by the United States District Court, the defendant duly tendered this, its bill of exceptions herein, which having been seen and examined by the Court, and counsel, is by the Court allowed and approved, and said Bill of Exceptions is signed and sealed by the Honorable Jeremiah Neterer, judge of the said Court, before whom said proceedings were had, and the same is ordered by said Court to be filed and made a part

of the record herein, which is now accordingly done, and it is ordered that said bill be filed, and filing shown of record as of this 12th day of July, 1934.

I, Jeremiah Neterer, judge of the United States District Court of the Western District of Washington, Northern Division, and the judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing bill of exceptions are matters and proceedings occurring in said cause.

I do further certify that the foregoing bill of exceptions contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record herein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions and rulings thereon not already a part of the record herein.

I do further certify that Exhibits Nos. 1 to 8 inclusive, and Nos. A-1 to A-5 inclusive, are all of the exhibits admitted upon [66] the trial of said cause, with the exception of certain Coast Guard regulations admitted and considered pursuant to stipulation.

GIVEN UNDER MY HAND AND SEAL this
12th day of July, 1934.

JEREMIAH NETERER,

Judge.

Approved as to form and substance and notice of presentation waived:

DATED this 12th day of July, 1934.

J. CHARLES DENNIS,

U. S. Atty.

JOHN AMBLER,

Asst. U. S. Atty.

Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 12, 1934. [67]

EXHIBIT "A."

[Title of Court and Cause.]

MOTION FOR JUDGMENT.

Comes now the defendant at the conclusion of the submission of evidence upon the trial of the above entitled action, both parties having rested, and moves the court for judgment in its favor and for a dismissal of plaintiff's action, upon the ground and for the reason that under the evidence herein, and the law applicable thereto, the defendant is not liable to the plaintiff for the damage sustained in the transaction involved in this proceeding.

WRIGHT, JONES & BRONSON,

Attorneys for Defendant.

Service of the foregoing motion hereby admitted, and it is hereby stipulated and agreed that the same may be considered as made and filed in open court at the conclusion of the testimony in the case and upon submission for decision.

TOM DeWOLFE,

As't U. S. Atty.

EXHIBIT "B"

[Title of Court and Cause.]

DEFENDANT'S PROPOSED FINDINGS
OF FACT.

Comes now the defendant, and pursuant to the order and direction of the Court, submits herewith its proposed findings of fact, which it maintains are established by the evidence herein, and requests the Court to find such facts, or the substance thereof, as herewith proposed:

I.

That during all of the time hereinafter mentioned, the defendant herein was, and is now, a corporation sovereign.

II.

That the defendant is, and at all times hereinafter mentioned was, a corporation existing under the laws of the State of Washington, with its principal place of business in the city of Seattle, State of Washington, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court; that the said defendant was at the times hereinafter mentioned, engaged in conducting a ship-repair business at its plant located in the city of Seattle, for the repair and rebuilding of vessels, including the dry-docking thereof.

III.

That on or about the 18th day of November, 1931, the defendant entered into a contract with the plain-

tiff for the making of certain repairs on the United States Coast Guard vessel "Guard," which contract is in evidence herein, as plain- [69] tiff's exhibit No. 1.

IV.

That on December 30, 1931, such contract was in course of performance by the defendant, and the said vessel, at the time of occurrence of the fire hereafter referred to, was resting upon a floating dry-dock, 32 feet wide, and 70 feet long, moored upon the southerly side of a wharf, the face of which extended generally in an east and west direction, in the position marked "A" upon the map of defendant's premises, introduced in evidence as plaintiff's Exhibit 3; that to the south of said vessel was an open waterway, bounded upon the southerly side by a row of piles extending in an east and west direction, parallel to the wharf against which said dry dock lay, and about 100 feet south thereof; that to the north of said dry dock, and located upon the wharf against which the dry dock lay, and extending in an easterly and westerly direction, at a distance of about thirty feet from the southerly side of said wharf, was an open woodworking shed designated as a joiner shop, extending parallel to said dry dock to a distance approximately twenty feet beyond the easterly end thereof; that located about twelve to fifteen feet east of the easterly end of said joiner shop was a boiler room about twelve by sixteen feet in dimensions, which boiler room was in a north-easterly direction from said floating dock, and distant about fifty feet therefrom.

V.

That said vessel was required to carry, and did carry, pursuant to Coast Guard regulations in evidence herein as defendant's Exhibit A6, fire equipment for her own protection, consisting of extinguishers, sand in boxes, water in buckets, and fire hose connected with her own pumping equipment, but that by reason of being out of the water, and her own engines being dismantled, said vessel, at the time of the fire hereinafter referred to, was unable to use her own equipment for pumping [70] water; that the plant of the defendant was equipped with modern and sufficient fire-fighting equipment for its own protection, consisting primarily of approved chemical extinguishers located at various positions throughout the plant; that three 2½-gallon chemical extinguishers, separated by twenty-foot intervals, were hung upon the southerly side of the posts supporting the south side of the joiner shop, and directly opposite the said dry dock, and approximately thirty feet therefrom, and a fifty-gallon chemical cart extinguisher was located upon the northerly side of said joiner shop at the point marked "Y" on plaintiff's Exhibit 3B; that said extinguishers just referred to were accessible and available for use, but that defendant had not advised the crew of said vessel of their location or instructed them in the use of such extinguishers; that a convas-covered fire hose and connection was located upon the northerly side of the joiner shop at the point marked "O" upon plaintiff's Exhibit 3B; that in

addition there was a city watermain connection upon the dock, immediately adjoining said dry dock, in which there was a pressure of 125 pounds; that connected thereto was a strong rubber hose, capable of withstanding such pressure, of one inch inside diameter, and approximately 150 feet in length, and capable of throwing a stream of water at least sixty to seventy feet.

VI.

That defendant's workmen were engaged in working upon said vessel under said contract on December 30, 1931, *upon* until about 4:30 o'clock P. M., at which time they left said vessel. That on said day the regular crew of said vessel consisted of its commanding officer and seven men; that the commanding officer left said vessel about 5:00 P. M. on December 30th, and that all of said crew except two men were permitted to leave, and did leave said vessel, at or about the same time; that the crew of two men left on board were considered by the plaintiff and its commanding [71] officer to be adequate and sufficient to care for the safety of said vessel in any emergency that might ordinarily arise, and also were considered sufficient to move the dry dock if necessary, and to extinguish any fire, or take care of anything out of the ordinary which would occur on board of said vessel. That it was the practice of the crew of said vessel to take the hose connected with the main adjoining said dry dock on board the said vessel at night for its protection against fire,

and that on the evening of December 30, 1931, said hose was properly connected up to said main, and was tested by the commanding officer of said vessel, and the nozzle-end thereof taken on board of said vessel so as to be available in the event of fire, and that the commanding officer of said vessel considered that it was sufficient to take care of a fire on board said vessel.

VII.

That early in the morning of December 31, 1931, about the hour of 4:30 or 5:00 A. M., a fire originated at defendant's plant in the boiler room; that said fire was discovered by a care-taker living upon a barge moored at defendant's plant, but who was not employed by defendant; that such person immediately notified defendant's watchman, who was then in the dock-master's office, from which point the fire was not visible; that such person immediately telephoned in an alarm for the fire department, and then went to a point on the wharf adjoining said vessel and called the members of the crew, and as soon as possible after being called, the members of the crew responded, and went from their vessel to the wharf; that at that time the fire was confined to the inside of the boiler room, and flames were just beginning to break through the roof; that the members of the crew took the hose from on board the "Guard" on to the wharf, and turned on the water pressure, and endeavored for a period of five to seven minutes to put out the fire in the boiler room, but were unable to do so. [72] That

the fire made headway, and spread to the joiner shop on the west; that stored in said joiner shop, at a point forty to fifty feet from the easterly end thereof, was a dinghy belonging to the plaintiff's vessel; that after abandoning efforts to put out the fire, the crew dropped the hose on the wharf and went into the shed and carried out the dinghy, and took it to a point approximately 125 feet distant, and then returned; that the heat and sparks from the fire had by this time ignited the canvas hatch covering on said vessel; that the crew thereupon cut or cast off the lines going from the dry dock to the wharf, and with the assistance of the wind, the dock was pushed and drifted out in a south-westerly direction into the open channel out of range of the fire, and the crew thereupon extinguished any flames remaining by the use of buckets and water dipped from alongside the dock; that at no time did the crew use said hose above referred to upon said vessel; that had said hose been kept on board said vessel, and used for the protection of said vessel, it could have prevented, or substantially lessened, the damage that said vessel suffered from the fire; that the vessel was scorched and charred by the heat, necessitating repairs as set forth in plaintiff's Exhibits 2 and 5, for the making of which plaintiff paid the sum of \$3,362.00.

VIII.

That immediately upon being notified of the fire, defendant's watchman went to unlock the gate at

the northerly edge of defendant's plant, in order to permit the fire department to enter; that ordinarily the first equipment of the fire department of the city of Seattle would respond to a call from such location in from three to five minutes, but that upon this occasion such equipment did not arrive for a period of from fifteen to twenty minutes; that when the watchman unlocked the gate he returned to the scene of the fire, which had then spread to the joiner shop; [73] that he endeavored to reach the fire hose upon the northerly side thereof, but that by reason of the draught and the heat carried under the roof he was unable to do so, and was likewise unable to make use of the chemical cart above referred to.

IX.

That the dry dock upon which said vessel rested was moored to the wharf by lines fastened to cleats in the usual manner; and such dry dock was capable of being readily moved by two men, particularly in the case of an assisting breeze; that at the time of such fire there was a light breeze from the north or northeast, blowing from the fire towards the dry dock; that the crew of said vessel did not undertake to move said dock for at least fifteen minutes after they were awakened, and went on board the wharf and began fighting the fire; that had they undertaken to move it at once, or even at the time they ceased using the hose and went to carry out the dinghy, they could have moved it out of reach of the fire in time to have prevented the damage

that occurred to the boat, or a very substantial part thereof; that there was nothing to prevent the crew from moving said vessel immediately they were awakened, and went on deck.

DONE IN OPEN COURT this.....day of
November, 1933.

.....
Judge. [74]

EXHIBIT "C"

[Title of Court and Cause.]

DEFENDANTS EXCEPTIONS TO FINDINGS,
AND REQUEST FOR ADDITIONAL
FINDINGS.

Comes now the defendant, and excepts to the findings of the Court filed herein upon the 26th day of December, 1933, and to the Court's refusal to make findings as proposed in defendant's proposed findings of fact filed herein pursuant to order and direction of the Court upon the 26th day of December, 1933, and requests the Court to make additional findings herein as follows:

I.

The defendant excepts to the following findings as made by the Court, and to each of them, upon the ground that such findings are unsupported by and contrary to the evidence in the case:

(a) To that portion of finding number 3, reciting that the crew of the plaintiff had not, by the defendant, nor by any other person, been advised

or instructed in the use of such fire extinguishers, or given authority or permission to use the same.

(b) To that portion of finding number 3, reciting:

“That there was no fire hydrant or water-main for fire protection on the wharf adjacent to the dry dock or the Guard, or between said vessel and the joiner shop;”

(c) To that portion of finding number 3, reciting that the fire equipment carried by the Guard for its own protection was [75] rendered useless during the time it was in dry dock, except as to the water pumps.

(d) To that portion of finding number 3, reciting that: “The seamen acted with all diligence and as reasonably prudent persons would under the circumstances.”

(e) To that portion of finding number 3, reciting that: “There was no fire protection afforded for the protection of the vessel on the dry dock, either by water supply or chemical apparatus.”

(f) To that portion of finding number 3, reciting that: “The court finds that the relation between the plaintiff and the defendant was that the bailor and bailee, under bailment to the mutual benefit of both parties, in which the bailee agreed to furnish the vessel ample fire protection during the time in dry dock or on the marine way, and said bailee failed to exer-

cise, under the circumstances, ordinary care required under the law and the said contract.”

II.

The defendant excepts to the finding or conclusion of law “that plaintiff is entitled to recover judgment against the defendant in the sum of \$3,362.00, together with the interest thereon from the date of demand, and the costs and disbursements to be taxed herein,” upon the ground that such finding is not supported by, but is contrary to the evidence and the findings of the Court herein.

III.

The defendant excepts to the failure and refusal of the Court to make and enter such portions of defendants proposed findings of fact filed herein upon the 26th day of December, 1933, as are hereinafter set forth, or the substance thereof, and moves for additional findings in such respects as hereinafter set forth, upon the ground that such findings and the propositions covered thereby, as hereinafter set forth, were and are established by the positive, undisputed evidence in this case, and reasonable and necessary inferences therefrom: [76]

(a) To the failure and refusal of the Court to find as set forth in paragraph V of defendant's proposed findings:

“That said vessel was required to carry, and did carry, pursuant to Coast Guard regulations in evidence herein as defendant's Exhibit A6,

fire equipment for her own protection, consisting of extinguishers, sand in boxes, water in buckets. * * *

(b) To the failure and refusal of the Court to find as set forth in paragraph VI of defendant's proposed findings, reciting:

"That the crew of two men left on board were considered by the plaintiff and its commanding officer to be adequate and sufficient to care for the safety of said vessel in any emergency that might ordinarily arise, and also were considered sufficient to move the dry dock, if necessary, and to extinguish any fire, or take care of anything out of the ordinary which would occur on board said vessel."

(c) Defendant also requests the Court to make a finding upon the proposition that the purpose of the fire protection clause in the contract was to furnish to the vessel similar fire protection to that provided by her own equipment when not out of commission, and that such protection was furnished by the hose and water supply provided for said vessel.

(d) To the failure and refusal of the Court to find as set forth in paragraph VI of defendant's proposed findings, reciting:

"That the commanding officer of said vessel considered that it was sufficient to take care of a fire on board said vessel."

and in connection therewith defendant requests the court to make and enter its finding upon the propo-

sition of whether or not the commanding officer of the Guard considered and accepted the hose furnished to the vessel as being adequate and sufficient for its protection.

(e) To the failure and refusal of the Court to find as set forth in paragraph VII of defendant's proposed findings, [77] reciting that at the time the members of the crew went from the vessel to the wharf,

“the fire was confined to the inside of the boiler room, and the flames were just beginning to break through the roof,”

and that the members of the crew endeavored for a period of five to seven minutes to put out the fire in the boiler room.

(f) To the failure and refusal of the Court to find as set forth in paragraph VII of defendant's proposed findings, reciting that:

“The dock was pushed and drifted out in a south-westerly direction into the open channel out of range of the fire, and the crew thereupon extinguished any flames remaining by the use of buckets and water dipped from alongside the dock.”

(g) To the failure and refusal of the Court to find as set forth in paragraph VII of defendant's proposed findings, reciting:

“That at no time did the crew use said hose above referred to upon said vessel; that had said hose been kept on board said vessel, and

used for the protection of said vessel, it could have prevented, or substantially lessened, the damage that said vessel suffered from the fire;” and in this connection the defendant requests the Court to make a finding upon the proposition as to whether or not, if the hose kept on board the vessel had been used upon the vessel, it would have prevented or substantially lessened the damage which occurred.

(h) To the failure and refusal of the Court to find as set forth in paragraph VIII of defendant’s proposed findings, reciting that the watchman

“endeavored to reach the fire hose upon the northerly side thereof, but that by reason of the draught and the heat carried under the roof, he was unable to do so, and was likewise unable to make use of the chemical cart above referred to.”

(i) To the failure and refusal of the Court to find as set forth in paragraph IX of defendant’s proposed findings, [78] reciting that:

“Such dry dock was capable of being readily moved by two men, particularly in the case of an assisting breeze; that at the time of such fire there was a light breeze from the north or northeast, blowing from the fire towards the dry dock; that the crew of said vessel did not undertake to move said dock for at least fifteen minutes after they were awakened, and went on board the wharf and began fighting the fire; that

had they undertaken to move it at once, or even at the time they ceased using the hose and went to carry out the dinghy, they could have moved it out of reach of the fire in time to have prevented the damage that occurred to the boat, or a very substantial part thereof; that there was nothing to prevent the crew from moving said vessel immediately they were awakened, and went on deck;”

and in connection with the foregoing, the defendant requests the Court to make and enter its finding upon the following propositions:

1. What period of time elapsed from the time that the crew of the Guard was awakened and available for duty, to the time that they commenced moving the dry dock upon which the Guard rested away from the wharf?

2. Could the damage to the Guard have been prevented, had the crew of the Guard cut it loose and pushed it away from the dock.

- (a) Immediately upon responding to the alarm and before endeavoring to put out the fire:

- (b) At the time of ceasing efforts to put out the fire and before moving their dinghy?

3. Defendant also requests the Court to make a finding upon the proposition that at the time of the occurrence of said fire, the vessel was in the possession and under the control of the plaintiff, and

not in the exclusive possession and [79] control of the defendant.

WRIGHT, JONES & BRONSON,
Attorneys for Defendant.

The foregoing exceptions are hereby noted and allowed this 12th day of June, 1934.

JEREMIAH NETERER,
Judge.

The Court, having declined to make additional findings as requested by the defendant in paragraph III above, the defendants thereupon, in open Court, duly excepted thereto, which exception is hereby noted and allowed.

DATED this 12th day of June, 1934.

JEREMIAH NETERER,
Judge. [80]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT
OF RECORD.

To the Clerk of the above entitled Court:

Please prepare a transcript of record herein to include the following:

1. Plaintiff's complaint.
2. Defendant's answer.
3. Plaintiff's reply.
4. Stipulation waiving jury.
5. Bill of Exceptions.
6. Stipulation and Coast Guard Regulations.

7. Defendant's motion for judgment (by reference to Exhibit "A" of bill of exceptions).

8. Defendant's proposed findings of fact (by reference to Exhibit "B" of bill of exceptions).

9. Court's written findings of fact and conclusions of law filed December 26, 1933.

10. Defendant's exceptions to findings, and request for additional findings (by reference to Exhibit "C" of bill of exceptions).

11. Judgment.

12. Defendant's exceptions to judgment.

13. Assignment of errors.

14. Petition for appeal.

15. Order allowing appeal and fixing bond.

16. Order respecting transmission of exhibits.

17. Citation on appeal (original). [81]

18. Clerk's certificate.

19. Cost and supersedeas bond on appeal.

20. This praecipe.

WRIGHT, JONES & BRONSON

Attorneys for Defendant.

Received a copy of the within praecipe this 16th day of July, 1934.

J. CHARLES DENNIS

Attorney for Pltf.

[Endorsed]: Filed Jul. 16, 1934. [82]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.—ss.

I, Edgar M. Lakin, Clerk of the above entitled Court do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 82, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of the said District Court at Seattle, and that the same constitute the record on appeal herein from the Judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit: [83]

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 219 folios at 15¢	\$32.85
Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50
Certificate of Clerk to original exhibits	.50

I hereby certify that the above cost for preparing and certifying record, amounting to \$38.85 has been paid to me by the attorneys for the appellant.

I further certify that I attach hereto and transmit herewith the original citation on appeal issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this.....day of August, 1934.

[Seal]

ED. M. LAKIN,

Clerk of the United States District Court for the
Western District of Washington,

By TRUMAN EGGER

Deputy. [84]

[Title of Court and Cause.]

CITATION ON APPEAL.

THE PRESIDENT OF THE UNITED STATES,

To: THE ABOVE ENTITLED PLAINTIFF, and

To: J. CHARLES DENNIS, United States Dis-
trict Attorney, and

To: JOHN AMBLER, Assistant United States Dis-
trict Attorney, its Attorneys,

GREETING:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear in the United States Cir-
cuit Court of Appeals for the Ninth Circuit to be
held in the city of San Francisco, in the State of
California, within thirty (30) days from the date

of this writ, pursuant to an appeal filed in the office of the clerk of the District Court of the United States for the Western District of Washington, Northern Division, wherein The United States of America, a corporation sovereign, is plaintiff, and Lake Union Dry Dock & Machine Works, a corporation, is defendant, to show cause, if any there be, why the judgment in such appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

WITNESS the Honorable Jeremiah Neterer, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 16 day of July, 1934.

JEREMIAH NETERER

Judge.

Copy of the above citation received and due service of the same is hereby acknowledged this 16th day of July, 1934.

J. CHARLES DENNIS,

U. S. Atty.,

Attorney for Plaintiff.

[Endorsed]: Filed Jul. 16, 1934. [85]

[Endorsed]: No. 7569. United States Circuit Court of Appeals for the Ninth Circuit. Lake Union Dry Dock & Machine Works, a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed August 8, 1934.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

